IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Surendra Kumar Sharma & ors. Vs. Abdul Jabbar & ors.

S.B.CIVIL MISC. APPEAL NO.357/1992

Against the award dated 30.03.1992 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.84/1984.

Date of Judgment : 10.08.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

None present for the appellants
Mr.Jagdish Vyas for the respondent Nos.3&5

BY THE COURT:

This is claimants' appeal against the award dated 30.03.1992 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.84/1984 seeking enhancement over the amount of Rs.1,80,000/- awarded by the Tribunal as compensation on account of accidental death of their father Jai Krishan Sharma, about 48 years in age. Nobody has appeared for the claimant-appellants and this being an old appeal of the year 1992 arising out of a claim application made in the year 1984, it is considered appropriate to dispose it of on merits.

Brief relevant facts are that on 07.02.1984 the deceased Jai Krishan Sharma was travelling from Barmer to Jaipur in a bus bearing registration No. RNB 8021 belonging to the respondent No.4 M/s Gangwal & Salodia Travels, plying on contract with the respondent No.7 Rajasthan State Road Transport Corporation ('RSRTC') and driven by respondent No.6 Gyan Singh; between Kaparda and Bhavi at about 12:30 a.m. the bus collided with a truck bearing registration No.RJR 6507 belonging to respondent No.1 Abdul Jabbar and driven by respondent No.2 Abdul Wahid. Both the vehicles were insured with the same insurer, The New India Assurance Company Ltd. (arrayed as respondent No.3 and 5). As a result of the accident, several passengers of the bus sustained injuries and two of them, Kurda Ram and Jai Krishan Sharma, succumbed to injuries; and their dependents submitted two claim applications (Nos. 63/1984 and 84/1984 respectively) before the Motor Accidents Claims Tribunal, Jodhpur.

In Claim Case No.84/1984 pertaining to the present appeal, wife, four sons and mother of the deceased Shri Jai Krishan Sharma, after narrating the incident and his accidental death, submitted that the deceased was posted as Principal at Central School, Barmer and was earning salary income of Rs.2310/- per month and was spending Rs.2,000/-

on the family and he was about to be promoted and his income was to increase. The claimants claimed pecuniary loss at Rs.10,00,000/- and stating other losses, in all made a claim for compensation in the sum of Rs.12,65,000/-. During pendency of the claim application, wife and mother of the deceased, claimant Nos. 1 and 6, expired and their names were deleted from the array of parties.

After framing of necessary issues and consolidating trial of the two claim cases and after taking oral and documentary evidence adduced by parties, learned Judge of the Tribunal proceeded to determine the issues involved in the cases by the common award dated 30.03.1992. On issue Nos.1 to 4, it was found that the accident occurred for rash and negligent driving of both the vehicles. However, the learned Judge proceeded to apportion the liability towards accident at 30% with the bus driver and at 70% with the truck driver. After rejecting the grounds urged by the insurer for its exoneration as involved in issue Nos.6,7 and 9, learned Judge took up quantification of compensation in issue No.5. Learned Judge referred to the salary income of the deceased Jai Krishan at Rs.2310/- and referred to the likelihood of future enhancement of salary income but thereafter abruptly concluded that looking to his future prospects and personal expenditure, it would be appropriate to award an amount of Rs.1,50,000/- to the

claimants that would yield interest income at Rs.1,800/- per month retaining the principal and, therefore, such award of compensation was just and proper. Learned Judge allowed further Rs.20,000/- towards non-pecuniary loss and yet further Rs.10,000/- towards last rites and other expenditure and in this manner assessed total loss at Rs.1,80,000/- and made an award in that amount in favour of the claimants. While considering awarding of interest, learned Judge observed that the evidence was closed by the claimants after a long delay only on 03.12.1991 and, therefore, interest at the rate of 12% per annum shall be payable only from 04.12.1991. The claimants have assailed the award aforesaid being too low and inadequate.

Learned counsel for the insurer Mr. Jagdish Vyas in the first place submitted that this appeal by the claimants seeking enhancement over the amount of compensation is rendered incompetent for the reason that this appeal already stands dismissed against respondent Nos.4 and 6 by the order dated 10.01.2003; and as no liability could be enhanced in relation to the respondent No.4 being owner of the bus involved in the accident, correspondingly no liability could be fastened on the insurer in relation to that 30% component of the award in respect of the said bus. Learned counsel has defended the impugned award with the submissions that though learned

Judge of the Tribunal has proceeded to make award in a lump sum, however, the award remains that of just compensation inasmuch as wife and mother of the deceased had expired during pendency of claim petition and other claimants were major sons of the deceased and obviously the component of dependency gets receded in view of their age and independent earning. Learned counsel further submitted that having regard to the overall circumstances of the relevant period i.e. of the year 1984, the award cannot be said to be too low or grossly inadequate so as to warrant upward revision.

Having examined the impugned award and having given a thoughtful consideration to the submissions of learned counsel for the insurer, this Court is clearly of opinion that the submissions against the competence of this appeal cannot be accepted and the award on its quantification of compensation remains too low and deserves modification.

So far the competence of this appeal is concerned, noteworthy it is that the deceased met with the accident and sustained fatal injuries while travelling as a passenger in the bus RNB 8021 belonging to respondent No.4 insured with respondent No.5; but the bus was plying on contract with the respondent No.7 RSRTC when it collided with the truck RJR 6507 belonging to respondent No.1 that too was insured with

the same insurer. The Tribunal in the present case of composite negligence of two vehicles qua the deceased has proceeded to apportion the liability at 70% with the truck and at 30% with the bus on contract with the Corporation and though insurer of both the vehicles is same viz., The New India Assurance Company Ltd., yet the Tribunal has proceeded to apportion the award amount with reference to the said insurer impleaded separately as non-applicant No.3 and as non-applicant No.5. Having regard to the fact that the bus was plying on contract with the Corporation, the part of liability ought to have been fastened on the Corporation, if at all any apportionment was to be made. Be that as it may, there being no appeal from the insurer against the directions and other findings made in the impugned award, it does not appear expedient to disturb the directions and other findings in the impugned award; but nevertheless it cannot be gainsaid that the matter was of composite negligence of both the vehicles in the context of deceased; and the claimants are entitled to recover compensation from either of the tortfeasors. In that view of the matter, dismissal of the appeal against the owner of the bus has no adverse effect on the competence of the claim for enhancement inasmuch as other set of tortfeasor i.e. owner, driver and insurer of the truck nevertheless remain on record. Moreover, the insurer being the same, even

otherwise the quantum of compensation is required to be borne by the said insurer. Viewed from any angle, the fact of dismissal of appeal against respondent No.4 is of no effect so far competence of this appeal is concerned.

There is no dispute on the fact that the deceased about 48 years in age was working as Principal, Central School, Barmer and was earning salary income of Rs.2310/- per month. The deceased being in settled employment and having substantial service period ahead, had some reasonable chances of future increments. However, having regard to the overall circumstances of the case and the age of sons of the deceased, the eldest one being in 27 years and youngest one being in 20 years of age, even if future prospects as such are not taken into calculation and only the static figure of the last drawn income of Rs.2,310/- is considered and one-third is deducted for personal expenditure of the deceased, yet an average contribution figure of Rs.1,540/- per month could reasonably be taken and thereby the multiplicand of Rs.18,480/- per annum is available for the claimants. Even if a multiplier of 13 is applied, pecuniary loss itself stands at minimum Rs.2,40,240/- and there appears no reason to deprive the claimants of this much of pecuniary loss and obviously, the estimate by the learned Judge of the Tribunal of pecuniary loss at Rs.1,50,000/- falls too short of

reasonable assessment. The learned Judge has allowed non-pecuniary loss at Rs.20,000/- and then further Rs.10,000/- towards last rites and such figures deserve to be reduced to bring the award within the range of a just compensation. In the overall circumstances of the case, the four sons of the deceased deserve to be allowed Rs.3,000/- each towards loss of love, affection and guidance; and funeral expenses deserve to be allowed at Rs.2,000/-.

In the aforesaid view of the matter, the claimants are entitled for compensation in the sum of Rs.2,54,240/- (Rs.2,40,240/- + Rs.12,000/- + Rs.2,000/-). Therefore, the award of compensation by the Tribunal in the sum of Rs.1,80,000/- deserves to be enhanced by a sum of Rs.74,240/-. This Court is opinion that such award in the sum of Rs.2,54,240/- remains that of just compensation even on conservative estimates and there is no reason to deprive the claimants of such compensation.

The Tribunal has further acted wholly illegally in depriving the claimants of reasonable interest over the award amount with the observations that there had been delay on the part of the claimants in producing evidence and they closed the evidence on 03.12.1991 and, therefore, the interest be awarded only from 04.12.1991 at the rate of 12% per annum. This Court is of opinion that unless the claimants are guilty of

deliberate delay, ordinarily, interest on the compensation amount from the date of claim application deserves not to be disallowed. In the present case, issues were framed only on 06.07.1989 and prior to that on several dates, the matter was simply adjourned to be posted alongwith other connected case and issues were then amended on 06.09.1989 and thereafter both the matters were ordered to be posted consolidated as recorded in the order-sheet dated 20.11.1989 although consolidation order had already been made on 06.07.1989. Thereafter what delay was caused by the claimants of the present case, has not been spelt out. In this view of the matter and further in view of the grossly inadequate award made by the Tribunal, this Court is of opinion that on the enhanced amount of award, the claimants deserve to be allowed interest at the rate of 7.5% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The claimants are awarded further compensation in the sum of Rs.74,240/- with interest at the rate of 7.5% per annum from the date of filing of claim application. The amount payable under the modified award shall be deposited by the respondent-insurer within 30 days from today with the Tribunal. The Tribunal shall apportion the amount equally amongst the appellants-claimants and half

of the amount for each of the claimants shall be paid cash and remaining shall be deposited in Monthly Income Scheme of Post Office with the respective claimants being entitled to receive periodical interest thereupon. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

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